IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES	:	
	:	
v.	:	CRIMINAL No. 05-CR-134
	:	
DARRYL K. BARNES	:	

M E M O R A N D U M

Padova, J. **August 8, 2005**

On March 9, 2005, Defendant Darryl K. Barnes was charged in a four-count Indictment with possession of more than 50 grams cocaine base, in violation of 21 U.S.C. § 841(a)(1)(Count I); possession of cocaine with intent to distribute, in violation of 21 U.S.C. § 841(a)(1) (Count II); possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c) (Count III); and possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1) (Count IV). Presently before the Court is Defendant's "Motion to Suppress Post-Arrest Statements." (Doc. No. 31). For the reasons that follow, said Motion is granted in part and part and denied in part.

I. BACKGROUND

The following facts are undisputed. On February 9, 2005 at approximately 2:20 pm, Police Officers Timothy Bogan, Brian Dietz, and other members of the Philadelphia police force executed a search warrant for a residence located at 2625 Manton Street, Philadelphia, Pennsylvania. The warrant specified that the items to be searched and seized included cocaine, cocaine base, and any other contraband identified as illegal under the Pennsylvania

Controlled Substances Act of 1972, proof of residence, ownership and occupancy, records of illegal activity, weapons, ammunition and U.S. currency. Defendant and his girlfriend, Ativa Gardner, were present during the execution of the warrant. While the officers were conducting the search, Defendant informed them that he had a gun and "some product" in a safe in the basement, that he had just finished "cooking product" in the kitchen, that he lived at the 2625 Manton Street residence, and that he was unemployed.

As a result of the search, the officers seized a packet of cocaine base from the sofa where Defendant had been seated, $318 and two cellphones from Defendant's person, as well as a loaded 9mm handgun, three magazines, approximately 125 grams of powder cocaine, and an additional $7,871 from a safe in the basement. The Officers also recovered 116 grams of cocaine base from the kitchen, two scales, two pots, and two spoons, all of which contained cocaine residue, as well as numerous unused packets. In the instant Motion, Defendant argues that all statements made by him during the execution of the search warrant, and all physical evidence derived therefrom, should be suppressed because the police officers subjected him to custodial interrogation without first reading him his Miranda rights.

II. LEGAL STANDARD

The Fifth Amendment provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself."

U.S. Const., Amend. V. In Miranda v. Arizona, 384 U.S. 436 (1966), the Supreme Court determined that the Fifth Amendment requires that an accused be informed of and waive certain rights before an interrogation can commence. Id. at 479. Accordingly, an accused

> must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

Id. The police can question a suspect without counsel being present and introduce at trial statements made during the interrogation only if the accused has knowingly, voluntarily, and intelligently waived his Miranda rights. Id. "Where a defendant seeks to suppress a post-arrest statement, the government bears the burden of establishing by a preponderance of the evidence that the statement was not the product of custodial interrogation conducted in the absence of Miranda warnings," or that the "interrogation fits within a recognized exception to the Miranda rule." United States v. DeSumma, 44 F. Supp. 2d 700, 703 (1999) (citing Colorado v. Connelly, 479 U.S. 157, 168 (1986)).

III. DISCUSSION

Defendant argues that all post-arrest statements made by him and all physical evidence derived therefrom should be suppressed because the police officers subjected him to a custodial interrogation without informing him of his Miranda rights. The

Government has advised the Court that it intends to introduce at trial only the following four statements made by Defendant during the execution of the search warrant: (1) that there was a gun and "some product" in the safe in the basement of the residence; (2) that he had just finished "cooking product" in the kitchen; (3) that he resided at 2625 Manton Street; and (4) that he was unemployed. The Government does not dispute that Defendant was subject to custodial interrogation at the time he made these statements and that he had not been informed of his Miranda rights. Rather, the Government argues that each of the statements made by Defendants falls into an exception to the general rule that police officers must advise a suspects of his Miranda rights prior to custodial interrogation.

A. Public Safety Exception

The Government argues that Defendant's statement that he had a gun and "some product" in the safe in the basement falls under the public safety exception to the Miranda rule. It is well-established that police officers can ask "questions necessary to secure their own safety or the safety of the public" without first providing Miranda warnings. New York v. Quarles, 467 U.S. 649, 658-59 (1984). The public safety exception, however, applies only where there is "an objectively reasonable need to protect the police or the public from any immediate danger associated with [a] weapon." Id. at 659 n.8. "What is objectively reasonable, of

course, depends upon the circumstances of the arrest." DeSumma, 44 F. Supp. 2d at 704.

Here, the uncontroverted testimony presented at the hearing on Defendant's Motion established that Officer Dietz secured and handcuffed Defendant immediately after entering the residence. (06/22/2005 N.T. at 70.) At the same time, other officers secured Ativa Gardner, who was standing on the stairs leading up from the living room, and escorted her upstairs. (06/23/2005 N.T. at 106-07.) Thereafter, Officer Bogan walked over to the couch on which Defendant was seated and recovered a clear packet containing crack cocaine. (06/22/2005 N.T. at 71.) Officer Bogan then informed Defendant that the police officers were executing a search warrant on the residence, and asked Defendant if he had illegal contraband or anything that would harm the police or himself inside the property. (Id.) At this point, Defendant advised Officer Bogan that he had a gun and "some product" in the basement in a safe. (Id. at 72.) Without any further questioning by the police officers, Defendant then led Officer Bogan into the basement, directed him to the location of the safe, and advised him that the key for the safe was in the pocket of a shirt hanging in a nearby closet. (Id.) When Officer Bogan opened the hanging closet, Defendant directed him to the shirt which contained the key. (Id.) Upon opening the safe, Officer Bogan recovered a clear plastic bag containing approximately 125 grams of powder cocaine, a 9mm handgun

loaded with 14 rounds of ammunition, three additional magazines, and $7,871. (Id. at 72-73.)

Under these circumstances, the Court concludes that there was no objectively reasonable need for the officers to ask Defendant whether he had illegal contraband or weapons in order to protect the police or the public from an immediate danger. Defendant was secured, handcuffed, and seated on a couch when Officer Bogan questioned him, while his girlfriend Ativa Gardner had similarly been secured and escorted upstairs. Neither Defendant nor Ativa Gardner struggled, were combative, or attempted in any other way to evade arrest or threaten the officers and others. Moreover, there is no evidence to suggest that the agents believed Defendant was carrying a weapon or had access to one. The Court, therefore, finds that this was not a situation in which the police officers could objectively and reasonably conclude that the Defendant presented a danger to themselves or others. See Quarles, 467 U.S. at 659 n.8. As the arresting officers did not give Defendant any Miranda warnings prior to asking him whether there was illegal contraband or anything that could harm them or others on the property, Defendant's statements that he had a gun and "some product" in a safe in the basement must be suppressed.

Defendant argues that the evidence seized as a result of his statement should also be suppressed. Generally, evidence obtained as a result of a constitutional violation is suppressed because it

is the "fruit of a poisonous tree." Oregon v. Elstad, 470 U.S. 298, 307 (1985). The United States Supreme Court, however, has held that "police do not violate a suspect's constitutional rights . . . by negligent or even deliberate failures to provide the suspects with the full panoply of warnings prescribed by Miranda." United States v. Patane, 542 U.S. 630, 124 S.Ct. 2620, 2629 (2004). Rather, "[p]otential violations occur, if at all, only upon the admission of unwarned statements into evidence at trial." Id. Accordingly, the failure to give a suspect Miranda warnings does not require suppression of the physical fruits of a suspect's statements unless those statements were involuntary and, therefore, themselves unconstitutional under the Fifth Amendment. Id. at 2626-28.

In the context of the Fifth Amendment, "coercive police activity is a necessary predicate to the finding that a [statement] is not 'voluntary.'" Connelly, 479 U.S. at 167. Here, Defendant volunteered the statement that he had a gun and some product in a safe in the basement in response to a single question asked by Officer Bogan. Moreover, without any further prodding by the police officers, Defendant then accompanied the officers into the basement and showed them where the safe and corresponding key were located. At the time, Defendant had only been in custody for a few minutes, and the record contains no evidence of any kind of coercive police activity or compulsion. See DeSumma, 44 F. Supp.

2d at 706 (finding statement made shortly after suspect was taken into custody was voluntary when given in response to a single question and record was void of evidence of police coercion). Accordingly, the Court finds that Defendant's statement that he had a gun and "some product" in a safe in the basement was voluntary, and concludes that the gun, cocaine, and other items retrieved from the safe in the basement are admissible at trial.

B. Voluntary Statements Exception

The Government argues that Defendant's statement that he had "just finished cooking product" in the kitchen should not be suppressed because it was a voluntary, spontaneous utterance prior to which no Miranda warnings are required. In enunciating the Miranda rule, the Supreme Court noted that "[v]olunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding today." Miranda, 384 U.S. at 478. Accordingly, voluntary statements made while in police custody that are not the result of any kind of interrogation are admissible regardless of whether Miranda warnings were previously given. United States v. Fioravanti, 412 F.2d 407, 413 (3d Cir. 1969). A statement is the product of police interrogation if it is the result of "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom in a significant way." Miranda, 384 U.S. 44.

Here, the uncontroverted testimony presented at the hearing established that after Officer Bogan opened the basement safe and its contents were secured, the Defendant stated that he had just finished "cooking some product" in the kitchen, and that the product was currently sitting on top of the microwave. (06/22/2005 N.T. at 73.) Defendant had not been asked any additional questions since Officer Bogan first inquired whether any illegal contraband or harmful objects were on the premises. (Id.) Under these circumstances, the Court concludes that Defendant's statement that he had just finished "cooking some product" in the kitchen was not prompted by any form of interrogation, but rather was volunteered by Defendant while in police custody. See Miranda, 384 U.S. 44. Accordingly, the police officers were not required to give Defendant any Miranda warnings, and this statement as well as the physical evidence received as a result thereof are admissible at trial.

C. Routine Booking Questions Exception

Finally, the Government argues that Defendant's statements that he lived at 2625 Manton Street and was unemployed are admissible under the routine booking exception to Miranda. The Supreme Court has held that statements regarding "biographical data necessary to complete booking or pretrial services" are not subject to the Miranda rule. Pennsylvania v. Muniz, 496 U.S. 582, 601 (1990) (internal quotation omitted). Under this exception, police

officers may ask a suspect routine booking questions such as his "name, address, height, weight, eye color, date of birth, current age, or [other] matters reasonably related to the police's administrative concerns" without obtaining a waiver of the suspect's Miranda rights. United States v. Algarrobo, Crim. No. 00-318-01, 2000 WL 1886595, at *2 (E.D. Pa. Dec. 14, 2000) (citing Muniz, 496 U.S. at 601-02).

The uncontroverted evidence testimony presented at the hearing establishes that, after a preliminary search of the 2625 Manton Street premises had been completed, Police Officer Cramey asked Defendant certain biographical information needed to complete a routine biographical information arrest report on Defendant. (02/22/2005 N.T. at 97.) In response to a question by Officer Cramey asking Defendant where he lived, Defendant answered "2625 Manton." (Id. at 97-98.) Moreover, in response to Defendant's statements, Officer Cramey noted on the form that Defendant was unemployed. (Govt. Ex. 2.) The Court finds that these statements were made in response to routine booking questions regarding Defendant's biographical data, which were necessary to complete the biographical information arrest report form. The Court concludes that the police officers were, therefore, not required give Defendant any Miranda warnings prior to asking him for his address and occupation. Accordingly, Defendant's statements that he resided at 2625 Manton Street and was unemployed are admissible at

trial.

IV. CONCLUSION

For the foregoing reasons, Defendant's "Motion to Suppress Incriminating Statements" is granted in part and denied in part.

An appropriate Order follows.

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O R D E R

AND NOW, this 8th day of August, 2005, upon consideration of Defendant's "Motion to Suppress Incriminating Statements" (Doc. No. 31), the Government's submission received in response thereto, and the hearing held on June 22 and 23, 2005, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** in part and **DENIED** in part as follows:

1. Defendant's Motion to Suppress is **GRANTED** with respect to Defendant's statement that he had a gun and "some product" in a safe in the basement, and Defendant's statement that he had a gun and "some product" in the safe in the basement is hereby **SUPPRESSED**; and

2. Defendant's Motion to Suppress is **DENIED** in all other respects[1].

BY THE COURT:

/s/ John R. Padova

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John R. Padova, J.

[1] As the Government has advised the Court that it does not seek to introduce any other post-arrest statements made by Defendant at trial, the Court has not reached the question of whether such statements would be admissible.